ASA Investerings Partnership v. Commissioner
No. 00-8

Petition for a Writ of Certiorari

Questions Presented

1. Does *Moline Properties, Inc. v. Commissioner*, 319 U.S. 436 (1943) establish (1) a single-prong "business purpose" test for determining whether an entity may be disregarded for Federal income tax purposes, as the D.C. Circuit held below in concluding that petitioner was a "sham," or (2) a two-pronged, alternative "business purpose or business activity" test, as *Moline* itself states and numerous other Courts of Appeals have held and under which, as the D.C. Circuit itself acknowledged below, petitioner must be respected for tax purposes?

2. Does *Commissioner v. Culbertson*, 337 U.S. 733 (1949), which focuses on the purpose and intent of the parties, apply to determine whether persons are partners in a partnership when they form an unincorporated venture in which capital is a material income-producing factor, as the D.C. Circuit held below, or does IRC Sec. 704(e)(1) override *Culbertson* and treat all persons who acquire a capital interest in such a venture as partners in a partnership, irrespective of their purpose and intent, as the Seventh Circuit has held?

3. If *Commissioner v. Culbertson, supra*, applies, can the purpose and intent of persons forming an unincorporated venture in which capital is a material income-producing factor properly be

determined without considering whether they made capital contributions to the venture?

ACM Partnership v. Commissioner
No. 98-1106

Petition for a Writ of Certiorari

Question Presented

Whether a federal court may refuse to apply the federal income tax statutes and regulations that would otherwise govern a transaction on the ground that the taxpayer failed to satisfy a judicially created test, not anchored in any provision of the statutes or regulations, requiring an appreciable "non-tax economic effect" or a "subjective non-tax purpose."